

E-Filed 12/19/2013

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD RAY WILLIAMS,

Defendant.

Case No. 5:08-cr-00040-JF

ORDER DENYING MOTION FOR
RECONSIDERATION AND DIRECTING
THAT MATTER BE REASSIGNED TO
ANOTHER DISTRICT JUDGE

[re: ECF No. 413]

Defendant seeks reconsideration of this Court's order dated November 15, 2013, deferring consideration of his motion for relief pursuant to 28 U.S.C. § 2255 pending disposition of his direct appeal. *See* ECF Nos. 412, 413. Defendant's counsel asserts that she sought and obtained an extension of time to file Defendant's opening brief on appeal by representing to the Court of Appeals that this Court would determine the motion on the merits prior to the extended filing deadline. However, prior to obtaining the extension of time, counsel did not advise either the Court or the government that she was seeking expedited consideration of the § 2255 motion or even request that the Court establish a briefing schedule. As noted in the order dated November 15, 2013, the government has not yet responded to the motion (nor was it required to do so). *See* ECF No. 412. At no time did the Court authorize counsel to make any representation to the Court of

1 Appeals concerning the timing of the Court's consideration of the § 2255 motion, and apart from
2 one circumstance discussed below, there is nothing in the record that conceivably could support
3 such a representation. The entry on this Court's electronic docket of the Court of Appeals' order
4 granting Defendant an extension of time to file his opening brief (ECF No. 411) did not constitute
5 proper notice either to this Court or to the government of a request for expedited consideration.

6 On February 4, 2010, shortly after she replaced Defendant's trial attorney, counsel sought an
7 evaluation of Defendant's competency during trial, which had concluded many months earlier,
8 pursuant to 28 U.S.C. § 4142. *See* Tr. of Proc. held 2/4/2010, ECF No. 267. In denying that
9 request, the Court indicated that the appropriate means for raising the issue was a motion pursuant to
10 28 U.S.C § 2255. *Id.* at 61:23-62:21. The Court urged counsel to proceed with Defendant's
11 sentencing expeditiously so that a § 2255 motion would be ripe, and in that context the Court
12 assured counsel that a § 2255 motion thereafter would be determined on an expedited basis. *Id.* at
13 59:18-23, 89:16-90:3.

14 In fact, Defendant was not sentenced until May 22, 2013, more than three years later. ECF
15 No. 349. While much of this delay was the result of proceedings concerning Defendant's post-trial
16 competency, a significant portion of it was requested by counsel based on her assertion that she had
17 other professional and personal commitments and needed additional time to prepare. Moreover, the
18 § 2255 motion now before the Court, which although it was prepared by counsel is hand-written and
19 in some places nearly illegible, raises many issues in addition to the issue of Defendant's
20 competency during trial. *See* ECF No. 407. Under these significantly changed circumstances,
21 counsel's representation to the Court of Appeals as to the timing of the Court's consideration of the
22 § 2255 motion was not only unauthorized but also unreasonable.

23 Counsel also suggests that the undersigned deferred consideration of the § 2255 motion
24 because his reassignment to duties in Washington, D.C., significantly limits the time that he is able
25 to devote to pending matters in the Northern District of California. It is true that the undersigned's
26 time is limited. However, the reasons for the Court's order dated November 15, 2013, including the
27 requirements of Federal Rule of Criminal Procedure 37 and the fact that the government has not yet
28 responded to the § 2255 motion, are set forth in their entirety in the text of that order.

1 Notwithstanding the above, the undersigned acknowledges that proper consideration of the §
2 2255 motion – at such time as this Court has jurisdiction and the merits have been fully briefed – is
3 likely to be unusually time-consuming. Although the undersigned’s perspective as the trial judge in
4 the underlying matter is an important factor and the undersigned is reluctant to shift the burden to
5 another judge, the undersigned agrees that going forward it would be best if any future proceedings
6 with respect to the § 2255 motion were reassigned.

7 Accordingly, and good cause therefor appearing, IT IS HEREBY ORDERED that:

- 8 1. The motion for reconsideration is denied.
9 2. The Clerk is directed to reassign any future proceedings with respect to the § 2255
10 motion to another district judge.

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12 DATED: December 19, 2013

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14 JEREMY FOGEL
15 United States District Judge
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